

FRIDAY UPDATE—APRIL 1, 2005

*The weekly update of the activities of the Indiana General Assembly
A publication of the Indiana Judicial Center*

Here is our first April installment of the Friday Update, which highlights bills of interest to the Indiana Judiciary. The April 11th deadline for bills to be through the second and third reading processes is fast approaching.

If you are interested in reading the text of any bill introduced this session, you may find bill information on Access Indiana at http://www.in.gov/serv/lisa_billinfo. You may access past issues of the Friday Update at <http://www.in.gov/judiciary/center/leg/index.html>.

SALARY & BENEFITS:

There was action this week on the judicial salaries bills. SB 363, the compensation bill, passed its second reading in the House on Tuesday the 29th and is scheduled for its third reading next Monday, April 4th. HB 1113, the court costs bill to fund the salaries, passed out of Senate Appropriations yesterday and is expected to be heard on second and third readings in the next week. We were in contact with Judge Kellams this morning - he will be sending out a full report via e-mail to all judges next week and urges everyone to remain patient and polite.

The House Judiciary Committee heard SB 88 concerning judges' retirement benefits, authored by Sen. Bray. Sen. Bray explained that this bill would allow retired judges to continue receiving their retirement benefits in the event that they later become employed in state government. Judge Bridges of Monroe County, representing the Indiana Judges Association and speaking on behalf of Chief Justice Shepard, testified in support of the bill and emphasized that retired judges are the only category of retired government workers excluded from receiving retirement benefits if they later return to government work. The Committee voted do pass 10-0.

JUDICIAL ADMINISTRATION:

The Senate Appropriations Committee heard HB 1141, which as reported in the March 18th legislative update, provides for the establishment of a number of new courts and court magistrates. No changes were made in the bill's provisions for establishing in January 2006 a second Dearborn Superior Court, a second DeKalb Superior Court, and a fourth Howard Superior Court. Similarly, unchanged were the provisions establishing in January 2007 a sixth Hamilton Superior Court and a fourth and fifth Hendricks Superior Courts. Also, no change was made in the authorization for the judges of the Hendricks Superior Court to jointly appoint one full-time magistrate until removal by the judges or in January 2007, when the additional Hendricks Superior Courts are added. Additionally, unchanged is the authority for the part-time small claims referee of the DeKalb Superior

Court to continue assisting the DeKalb Superior Court in the exercise of its small claims jurisdiction until December 31, 2005, when the new DeKalb Superior Court 2 is created.

The Appropriations Committee did amend the bill, by consent, in a number of respects. The amendment deleted the portion of the bill creating a fifth Vigo Superior Court effective January 2006. The amendment also deleted the language that would allow the judges of the Madison Superior Court to appoint a magistrate. Furthermore, despite statements in the Committee session that the transformation of Montgomery County Court into Montgomery Superior Court 2 was to be unaffected by the amendment, the language which created the Montgomery Superior Court 2 was in fact deleted in the amendment. This deletion appears to be inadvertent, since the portion of the bill abolishing the Montgomery County Court and providing for the establishment of Montgomery Superior 2 effective January 2006 was retained. The amendment also provides for an eighth Monroe Circuit Court judge effective January 2006, and a ninth Monroe Circuit Court judge effective January 2008. The Committee voted unanimously to pass on the amended bill.

The House Judiciary Committee heard SB 212, authored by Sen. Bray, which allows for the appointment of a tax court senior judge. Sen. Bray explained that the Court of Appeals uses senior judges, and that the bill would extend this usage to the tax court. Judge Thomas Fisher, current tax court judge, testified in support of the bill explaining it would assist the court in easing the current case backlog. The Committee voted to pass 10-0.

The House Judiciary Committee also heard SB 322, authored by Sen. Bray, concerning local spending on criminal defense. This bill provides that a county, municipality, township, or municipal corporation may not pay the legal expenses of an employee or officer to defend against a criminal action, certain civil actions, or a proceeding in which the employee or officer is charged with an infraction. If the employee or officer is found to have no criminal or civil liability, the county, municipality, township, or municipal corporation is required to reimburse the employee for reasonable expenses (as determined by the local unit) in defending the action.

An amendment was adopted by consent which further provides that in the year in which a newly elected county officer takes office, the county fiscal body may change the compensation for holding the county office if:

1. the county officer requests the compensation change or, in the case of the county executive body, a majority of the county executive body requests the change; and
2. the county fiscal body approves the change. Rep. Thomas offered an amendment declaring an emergency for the act, which also was adopted by consent.

Attorney General Carter testified in support of the bill, noting that some counties owed up to \$2.3 million in attorney fees related to defending government officials found guilty, and he considered it important legislation to ensure that local fiscal bodies are not

require to pay such enormous fees unless the official is found not guilty. The Committee voted do pass 10-0.

CRIMINAL LAW

The House Family, Children, and Human Affairs Committee heard SB 523, concerning reentry court. Sen. Wyss introduced the bill by explaining it makes permanent an Indiana law that permits participants in a reentry court program to receive TANF and food stamps if they were otherwise permitted to do so. This program has cost about \$37,000 for Allen County, the only county with a reentry court. The Committee passed the legislation, 8-0.

The House Committee on Courts and Criminal Code passed a number of Senate bills on Wednesday. Of particular note were the passages of SB 525, life imprisonment for repeat Class A felony child sex offenders and SB 164, sex offender registration for repeat possession of child pornography offenders. The Committee also passed SB 233, child solicitation liability for a person age 21 or more who solicits a child 14 or 15, after amending it by inserting the legislation that died in the House making intimidation a D felony if the threat is communicated to either a court employee or a probation officer. Also inserted into SB 233 by amendment was the House legislation making panhandling a Class C misdemeanor.

CIVIL LAW

The House Judiciary Committee heard SB 373, authored by Sen. Bray, concerning the statutes of limitation in property matters. House sponsor, Rep. Borrer, explained that this bill allows property owners to assert as a defense the ten-and twelve-year statute of limitations for causes of action based on deficient design or construction of an improvement to real property against a person who owns or possesses real property at the time an alleged deficiency causes injury or wrongful death. Sen. Bray explained that this was necessary to put property owners on the same level as architects and contractors with respect to liability so the property owner does not become the "fall guy."

An amendment submitted by Rep. Borrer was adopted by consent clarifying that a deficiency does not mean a failure by a possessor to maintain, keep up, or improve an improvement to real estate following a substantial completion of an improvement. Representatives from the Indiana Retailer's Council, National Federation of Independent Business, Indiana Manufacturer's Association, and Indiana Energy Association testified in support of the bill. A representative from the Indiana Trial Lawyers Association testified against the bill, asserting that case law supported the position that the owner should have a duty of reasonable care rather than a duty to maintain the property. Indianapolis attorney Russ Sipe also testified against the bill, explaining that the intent to keep liability with property owners, rather than contractors and architects, was because property owners maintained the better position to know of potential flaws and defects in their property. Committee members voted do pass 7-4.

FAMILY & JUVENILE LAW

The Senate Judiciary Committee heard HB 1217, authored by Rep. Frizzell, concerning the release of adoption history. Rep. Frizzell explained that current legislation governing the release of adoption history applies to an adoption occurring after June 30, 1993, and only allows the release of information at the request of an adoptive parent. The information available for release is limited to certain social, medical, psychological, and educational records and reports and excludes information that would identify the birth parents. This bill would allow for the release of information upon the request of an adoptee over the age of twenty-one, and provides for the release of information for adoptions occurring before July 1, 1993. Representatives from the Children's Bureau of Indianapolis and an adoption agency association testified in support of the bill. The Committee voted do pass 9-0.

SB 529, the bill creating the Department of Child Services, was heard by the House Family, Children and Human Affairs Committee. Sen. Lawson reintroduced the bill to the Committee after its lengthy hearing on amendments last week. The discussion altered each of the amendments discussed last week either to answer questions posed by Committee members or in response to new concerns about the legislation. Sen. Behning reported the amendment creating a plan to coordinate a child's social, emotional, and behavioral health makes the Dept. of Education the lead agency, and provide for a report to be submitted on this issue by June 1, 2006. He also testified in favor of an amendment requiring Indiana to apply for a Medicaid waiver of special needs adoption. In response to questions concerning no income limits for eligibility for benefits, he added language to disregard income above certain levels and adopt a sliding scale for certain income levels.

There was no testimony on an amendment requiring the appointment of a GAL or CASA in all CHINS cases. Establishment of a separate Child Support Bureau within the Department of Child Services, because of federal law, was another amendment. It also provides immunity for the Director of the Department of Child Services in his official capacity. Leslie Rogers, Director, GAL/CASA, testified in favor of another amendment, which provides that only Supreme Court certified volunteer guardian ad litem or court-appointed special advocate programs are eligible for funding by the Division of State Court Administration.

Another amendment permits the Child Support Bureau to contract with private agencies to collect child support more than two years in arrears. The Bureau must establish a list of approved collection agencies, send the list to all prosecutors, and pre-approve or approve all contracts between a collection agency and a prosecutor. The collection agency would collect a fee of up to 15% of the arrearages. All the amendments discussed were adopted by consent of the Committee. The bill passed as amended, 9-0.

SB 340, concerning dismissal of CHINS petitions and adoption history reports was also heard. This bill requires that reasons be given by the state for dismissal of a CHINS petition, and permits appointment of a GAL/CASA in this instance; it requires an adoption history report be given to prospective adoptive parents; and it provides the court

may not grant an adoption if a prospective adoptive parent is convicted of sex offenses. An amendment was adopted identical to the one in SB 529, providing that only Supreme Court certified volunteer guardian ad litem or court-appointed special advocate programs are eligible for funding by the Division of State Court Administration. This legislation passed as amended 9-0.

HB 1198, concerning suspension reporting, out of school suspension programs, and permitting a child to drop out of school was heard by the Senate Judiciary Committee. Rep. Thompson and Sen. Kenley introduced the bill to the Committee. The legislation requires the reporting of reasons for suspensions and expulsions to the Department of Education. An amendment was adopted by consent to distinguish the reporting between students on some kind of disability status and students not disabled. Another amendment removed the language inserted earlier, which prohibited use of the student's court appearance against the child in a subsequent court proceeding, provided for the record to be expunged if the student completed the out of school suspension or expulsion program, and entitled the student or parent to legal counsel.

The ISBA Civil Rights of Children Committee testified in favor of the bill based on this earlier language. The amendment replaced that prior language with new wording indicating this law would not deprive a child of any due process rights to which the child was entitled. A concerned parent testified against the bill by indicating that in the county in which the program now exists, her child was placed into the program with no chance to explain the circumstances surrounding the school suspension. The ICLU indicated that since the sanction was imposed before the child was brought to court, there was no notice to parents, and under existing programs in some counties the student was charged a fee, they could not support the bill. The amendment was adopted by Committee consent. Another amendment adds an amended version of SB 1530, which provides for a very structured exit interview by the principal if a student 16 or 17 wishes to leave school. The bill provides a driver's license and a work permit may be denied if the child does not attend this interview. After lengthy discussion about this amendment, it was adopted and the bill passed as amended 9-0.

ELECTIONS & VOTING

The House Elections and Apportionment Committee heard SB 482, regarding the statewide voter registration list. The Committee voted do pass (with no amendments) 9-1. The Committee also heard SB 179, which establishes a procedure to give notice of the death of an officeholder to begin the process of filling the vacancy in office. The bill was amended by consent to add other events causing vacancy, including felonies. The bill passed out of Committee as amended 11-0.